

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA

LUCRETIA HORNSBY, ANMARIE YOUNG,
PRESTON YOUNG, DAWN HAMMOCK, CELINA
JORDAN, TABITHA ARLEDGE, ERICA MILLER,
OCIE BUTLER, and DARRELL THOMAS, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

MACON COUNTY GREYHOUND PARK, INC.,
MCGREGOR ENTERPRISES and MILTON E.
MCGREGOR,

Defendants.

Civil Action No. 3:10-CV680
CLASS ACTION

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

**PLEASE READ THIS NOTICE CAREFULLY. THIS IS NOT A LAWSUIT AGAINST YOU.
YOU MAY BENEFIT FROM READING THIS NOTICE.**

DESCRIPTION OF THE LAWSUIT

Lucretia Hornsby, Anmarie Young, Preston Young, Dawn Hammock, Celina Jordan, Tabitha Arledge, Erica Miller, Ocie Butler, and Darrell Thomas (together, the “Representative Plaintiffs”) have filed a class action lawsuit against Macon County Greyhound Park, Inc., (MCGP), McGregor Enterprises, and Milton McGregor (together, the “Defendants”), captioned Hornsby et al v. Macon County Greyhound Park, Inc. Civil Action No. 3:10-CV680 (the “Litigation”).

The Litigation alleges that Defendants failed to send out proper COBRA and ARRA Notices to certain employees who participated in the Defendants’ group health benefit plan through Blue Cross Blue Shield (“BCBS”). COBRA notice refers to the Consolidated Omnibus Reconciliation Act (29 USC § 1166) and ARRA notice refers to the American Recovery and Reinvestment Act (Pub. L. 111-5, Div B, Title III § 3001, 123 Stat. 462). More specifically, Representative Plaintiffs allege that if ARRA and COBRA information was provided to the Representative Plaintiffs it was misleading, and due to the misinformation by Defendants, Representative Plaintiffs and Class Members were not made aware of their eligibility for certain health insurance coverage and premium reductions. Defendants denied the allegations of the Litigation including Plaintiffs’ ability to bring the Litigation as a class action and requested the Court to dismiss the Litigation. Defendants maintain that they have meritorious defenses to all claims that were raised or could have been raised in the Litigation.

WHO IS INCLUDED IN THE CLASS?

For purposes of Settlement only, the Court will provisionally certify a “Settlement Class” consisting of “All former employees of Macon County Greyhound Park (d/b/a Victoryland and McGregor Enterprises)(“MCGP”) who participated in a group health insurance plan with BlueCross BlueShield of Alabama that was provided by MCGP in this action for employees of MCGP, including employees who signed an arbitration agreement as a condition to employment, and who were laid off from employment at MCGP in January and February of 2010 and who were not subsequently re-hired by MCGP”.

WHO IS NOT INCLUDED IN THE CLASS?

If you were rehired and went back to work for MCGP at any point in time after February, 2010, then you are NOT a part of the Settlement Class. Also, the Settlement Class does Not include employees who lost their jobs before January 2010 or in August, 2010.

DESIGNATION OF CLASS COUNSEL

For purposes of this Settlement, the Court has designated as Class Counsel Dale Segrest and Mike Segrest of The Segrest Law Firm, David P. Martin of The Martin Law Group, LLC, Robert S. Thompson of Robert Simms Thompson, P.C., and David L. Selby, II and J.B. Perrine of Bailey & Glasser LLP.

Class Counsel believe that the Settlement is fair and in the best interest of the Settlement Class. Class Counsel has thoroughly investigated the law and facts relating to the claims in the Litigation. This Notice should not be understood as an expression of any opinion by the Court as to the merits of any of the claims asserted in the Litigation or any defenses asserted in the Litigation.

SETTLEMENT NEGOTIATIONS

Class Counsel has made a thorough investigation of the law and the facts relating to the allegations of the Complaint and the defenses asserted by the Defendants. In conducting this investigation, Class Counsel has, among other things, reviewed several thousand pages of documents, taken numerous depositions, and prepared and responded to multiple motions. Class Counsel and Defendants have engaged in arms-length negotiations through two days of mediation under the supervision of court appointed mediator Chief United States Magistrate Judge Susan Russ Walker which resulted in an agreement to settle the claims against Defendants for \$1,300,000.00 as set forth in the Settlement Agreement, dated October 23, 2012. At the time of the mediation, the court had not ruled on pending Motions for Summary Judgment or the Motion to certify the case as a Class Action. In agreeing to the Settlement, Representative Plaintiffs and Class Counsel considered the risks of continued litigation, including lengthy appeals against Defendants and the likelihood of success, balanced against the substantial benefits to the Settlement Class which would accrue as a result of the proposed Settlement. Representative Plaintiffs, on advice of Class Counsel, have concluded that the proposed Settlement of the claims against Defendants is fair, reasonable and adequate and in the best interest of the Settlement Class.

WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

Under the terms of the Settlement, Class Counsel proposes and the Court has preliminarily approved a Settlement Fund, when the Settlement becomes Effective, in the amount of \$350,000.00 for the benefit of the Settlement Class. Each Settlement Class member will be paid approximately \$1,331.45 (this amount could change slightly based upon the incorrect inclusion or omission of possible class members) in full settlement of any and all claims that were asserted or could be asserted in the Litigation. If there are any funds remaining in the Settlement Fund after all payments to Class Members, the remaining funds will be returned to Defendants. A complete copy of the Settlement Agreement signed by Representative Plaintiffs and Defendants is on file with Office of the Clerk of Court, U.S. District Court, One Church Street, Montgomery, AL 36104, and is available for review during normal business hours.

WHAT IS THE VALUE OF THE SETTLEMENT?

COBRA/ARRA provides that when a plaintiff establishes a violation, whether as an individual or class member, such as wrong information as to the amount of the ARRA premium subsidy, then a statutory penalty may be assessed by the Court as damages and any such award of a penalty is discretionary. Additionally, if successful, a plaintiff can also recover as damages unreimbursed medical expenses that would be covered by the insurance plan. The Defendants have denied liability in this case and there is no guarantee that damages of any kind much less in excess of the agreed settlement amount would be recovered or could be collected. For further details regarding the value of this settlement, you can review the Settlement Agreement.

WHAT ARE THE BENEFITS TO THE CLASS?

The attorneys for the class believe that this settlement is fair, reasonable, and in the best interest of the class. The attorneys for the Settlement Class believe that it is appropriate to forego the speculative possibility of recovering a larger damage award for the prompt and immediate payment of the amount negotiated. Further, the Settlement avoids the uncertainties and costs of further litigation and any future trial. Settlement Class Members will be eligible to get compensation soon rather than after the time it would take to resolve the pending motions, have a trial and exhaust all appeals. Finally, another important benefit of this Settlement is that it will provide notice to those Settlement Class members who may have incurred medical expenses in excess of the agreed settlement amount and wish to pursue their own individual lawsuit (as explained in the section, What Are My Options). Without the benefit of this Settlement, these Settlement Class Members would otherwise not be made aware of the potential claims they could pursue for certain incurred medical expenses.

NO ADMISSION OF LIABILITY

By settling this Litigation, Defendants are not admitting that they have done anything wrong and instead continue to deny any liability. Defendants have agreed to settle the case solely to avoid the burden, expense, uncertainty and risk of further litigation.

CORRECT ADDRESS

If this notification was forwarded by the Postal Service, or if it was otherwise sent to you at an address which is not current, you should immediately send a letter to the Third Party Administrator, First Class, Inc. stating your past and current addresses and referencing the Hornsby Litigation. The address is as follows:

First Class, Inc.
5410 W. Roosevelt Road, Suite 222
Chicago, IL 60644-1479

RELEASE

Settlement Class Members who do not opt out (opting out is described below, in the section entitled *What Are My Options?*) shall be deemed to release Defendants from all claims arising out of or in connection with the Litigation. The terms of the release ("Release") are set forth in the Settlement Agreement which is on file with the Court and available for your review. When the settlement is approved and becomes final, Settlement Class Members will be deemed to have entered into this Release. This will limit your ability to bring any individual lawsuits against Defendants regarding the alleged failure by Defendants to send out proper COBRA/ARRA Notices.

WHAT ARE MY OPTIONS?

OPTION #1- *Accept the Settlement.* If you are a Settlement Class Member and you are satisfied with the Settlement terms, and the Court approves the Settlement, you will receive a check in the amount of approximately \$1,331.45. Remaining as a Settlement Class Member will not obligate you personally to pay any out-of-pocket costs or attorneys' fees and expenses. If you remain as a Settlement Class Member, you will continue to be represented by the Representative Plaintiffs (i.e. Class Representatives), and Class Counsel. However,

IN ORDER TO RECEIVE THE SETTLEMENT PAYMENT THAT YOU ARE ENTITLED TO, YOU MUST SELECT OPTION #1, COMPLETE AND SIGN THE ENCLOSED "CLASS NOTICE OPTION CLAIM FORM" AND RETURN IT IN THE SELF ADDRESSED STAMPED ENVELOPE TO:

First Class, Inc.
5410 W. Roosevelt Road, Suite 222
Chicago, IL 60644-1479

OPTION #2- *Ask to be Excluded from the Settlement because you don't want to be involved in the case.* -You choose, for whatever reason, that you simply do not wish to be involved in this lawsuit and are willing to give up your right to receive payment of \$1,331.45, and by doing so, you waive any rights which you have to bring future claims related to the claims alleged in this Litigation.

IN ORDER TO “OPT OUT” OF THIS LAWSUIT UNDER THIS PROVISION YOU MUST SELECT OPTION #2 AND SIGN THE ENCLOSED “CLASS NOTICE OPTION CLAIM FORM” AND RETURN IT IN THE SELF ADDRESSED STAMPED ENVELOPE, POST MARKED NO LATER THAN WITHIN (45 DAYS OF THE DATE OF THE MAILING) TO:

First Class, Inc.
5410 W. Roosevelt Road, Suite 222
Chicago, IL 60644-1479

OPTION #3- Ask to be Excluded from the Settlement and pursue your own lawsuit. - If you have incurred medical expenses or special damages related to the conduct of Defendants as described in this Litigation and as a result, you have damages in excess of the settlement amount (i.e. \$1,331.45), then you can bring your own cause of action for those damages. By choosing this option, you will be responsible for hiring your own Attorney, at your expense, establishing liability, and proving your damages before the appropriate Court or Arbitrator. If you choose this option, you are permanently waiving all rights to the \$1,331.45 payment, even if you are unsuccessful in your individual lawsuit and receive nothing as a result of filing your own claim.

IN ORDER TO “OPT OUT” OF THIS LAWSUIT UNDER THIS PROVISION YOU MUST SELECT OPTION #3 AND SIGN THE ENCLOSED “CLASS NOTICE OPTION CLAIM FORM” AND RETURN IT IN THE SELF ADDRESSED STAMPED ENVELOPE, POST MARKED NO LATER THAN WITHIN (45 DAYS OF THE DATE OF THE MAILING), TO:

First Class, Inc.
5410 W. Roosevelt Road, Suite 222
Chicago, IL 60644-1479

OPTION #4- Object to the Settlement. "Objector" shall mean any member of the Settlement Class who wishes to object to object to the fairness, reasonableness, or adequacy of the settlement; to the plan of allocation; to any term of the Agreement of Settlement; to the proposed case contribution awards; or to the proposed award of attorney's fees and expenses. The Court will consider your views. To object you must choose option #4 on the enclosed claim form and return it to the Notice Administrator in the enclosed self addressed stamped envelope. Be sure to give the reason for your objection in writing on the claim form. Your objection must be postmarked no later than (45 days from the date of the mailing), or your objection will not be valid and will not be considered by the Court. You are not giving up your right to participate in the settlement or opt out and bring your own lawsuit if you object. If the Court rule against your objection and approves the settlement you will have the choice of accepting the settlement benefit or opting out.

You may also ask the Court to be allowed to speak at the hearing on approval of the settlement. To do so, you must indicate your *Notice of Intention to Appear* by checking the appropriate box under option #4. Please include your name, telephone number, and signature. You cannot speak at the hearing if your *Notice of Intention to Appear* is not checked and postmarked on or before (45 DAYS FROM THE DATE OF MAILING).

IN ORDER TO OBJECT TO THIS LAWSUIT UNDER THIS PROVISION YOU MUST SELECT OPTION #4 AND SIGN THE ENCLOSED “CLASS NOTICE OPTION CLAIM FORM” AND RETURN IT IN THE SELF ADDRESSED STAMPED ENVELOPE, POST MARKED NO LATER THAN WITHIN (45 DAYS OF THE DATE OF THE MAILING), TO:

First Class, Inc.
5410 W. Roosevelt Road, Suite 222
Chicago, IL 60644-1479

PLAN OF DISTRIBUTION OF THE SETTLEMENT PROCEEDS

The Settlement, if and when finally approved by the Court and not subject to appeal, will provide funds out of which members of the Settlement Class that submit an approved claim will receive payment as follows:

Each eligible member of the Settlement Class shall receive a check in the approximate amount of \$1,331.45 representing their share of the Settlement Fund upon submission of the enclosed claim form to the Third Party Administrator and acceptance by the Third Party Administrator. The Settlement checks will be valid for (90) days commencing from the date the check is issued by The Third Party Administrator. The settlement checks will be available for distribution for a period of 6 months from the date of the effective date of the Settlement ("Payment Period"). Class Counsel will petition the court to compensate The "Representative Plaintiffs", as listed above, to receive a class service enhancement of \$2,200 to compensate them for their time and efforts in bringing this Litigation.

The funds for any member of the Settlement Class who cannot be located, and Settlement checks returned by the United States Postal Service for insufficient address or any other reason, shall be held by under the direction of class counsel in the Settlement Fund and available to be claimed by that member during the Payment Period of 6 months from the date of the effective date of this Settlement. In order to receive such checks from Class Counsel, the Settlement Class member claiming to be entitled to the check must produce documentation sufficient to demonstrate to Class Counsel his or her identity.

Members of the Settlement Class who not receive their Settlement checks for whatever reason or fail to cash their Settlement checks during the Payment Period: (i) shall be ineligible to share in the Settlement Fund, and (ii) shall be bound by any judgment entered in this Litigation. At the conclusion of six (6) months from the date of the effective date of this settlement, any remaining funds will be returned to Defendants.

ATTORNEY FEES AND EXPENSES AND CLASS ADMINISTRATION COSTS

Class Counsel will petition the court for an award of attorneys' fees and expenses from a separate Administrative Fund, in an amount that will be awarded by the Court as part of the final approval of Settlement. Class Counsel has agreed not to request more than \$950,000. Payment of attorneys' fees and costs will be separate from and in addition to the Settlement amounts paid to Settlement Class Members and will not reduce the Settlement Fund and/or payments to the Settlement Class Members. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Based on hourly rates, the amount paid as attorney's fees from the \$950,000 administrative fund compensates class counsel solely for the time they have worked on this case. Although Class Counsel is seeking standard hourly rates, they undertook this case on a purely contingent basis, with no certainty of payment. In addition, Class Counsel negotiated the settlement for the class before discussing with Defendants the amount of fees they would seek. In addition, no attorney fees or expenses are payable unless the Court finds them reasonable.

For purposes of Settlement, all the costs associated with administration of the class, including, but not limited to, all services rendered by the Third Party Administrator, will be paid as part of the Settlement, but will be paid by Class Counsel from the administrative fund and will become an expense for which Class Counsel will be reimbursed. None of the Class Administration expenses will be deducted from the Settlement Fund. In no event shall Defendants be liable for any amounts in excess of \$1,300,000.00

HEARING ON THE SETTLEMENT

The Court will hold a hearing (the "Final Approval Hearing") before the Honorable Myron H. Thompson, Courtroom ___, U.S. District Court, One Church Street, Montgomery, AL 36104 on April 22, 2013, at 10:00 a.m. to determine whether the proposed Settlement should be approved as fair, adequate and reasonable and to review the service awards to the Representative Plaintiffs and the amount of attorneys' fees and expenses that should be awarded to Class Counsel. The hearing may be continued without further notice. It is not necessary for you to appear at the hearing. However, you have the right to appear at the hearing with or without legal counsel. You will be responsible for the fees and expenses of any attorney you retain to attend the hearing.

ADDITIONAL INFORMATION

The pleadings and other records in this Litigation, including copies of the Settlement Agreement, may be examined any time during regular office hours at the Office of the Clerk of Court, U.S. District Court, One Church Street, Montgomery, AL 36104. If you need other information, you should write to Class Counsel at: The Segrest Law Firm, 301 King Street, Tallahassee, AL, 36078. You may also call Class Counsel, Mike Segrest, at 334-252-0036. *Do Not Call The Court Or The Clerk Or The Defendants.*